

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent Application of:	:	Examiner: <b>J. W. Donnelly</b>
<b>Yocum</b>	:	
	:	Group Art Unit: <b>3764</b>
Serial No.: <b>10/828,621</b>	:	
	:	Date: June 29, 2009
Filed: <b>April 22, 2004</b>	:	

**FOR: Device And Method For Holding Striking Targets For Use In The Practice Of Martial Arts**

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Commissioner of Patents and Trademarks

**APPEAL BRIEF OF APPLICANT**

Sir:

Having filed a Notice Of Appeal, the Applicant herein timely files this Appeal Brief in accordance with 37 C.F.R. 41 et seq.

**I. REAL PARTY IN INTEREST [37 CFR §41.37(c)(1)(i)]**

The subject application is not assigned. As such, the Real Party in Interest is the Applicant Aaron Yocum.

**II. RELATED APPEALS AND INTERFERENCES [37 CFR §41.37(c)(1)(ii)]**

No other related application is currently subject to an Appeal or Interference.

### **III. STATUS OF CLAIMS [37 CFR §41.37(c)(1)(iii)]**

Claims 1-3, 5-7, 9, 10, and 12-19 were pending in this application.

Claims 13 – 16 are subject to an opposed restriction requirement.

Claims 1-3, 5-7, 9, 10, 12 and 17-19 are rejected.

Claims 4, 8 and 11 are cancelled.

The claims on Appeal are Claims 1-3, 5-7, 9, 10, and 12-19.

### **IV. STATUS OF THE AMENDMENTS [37 CFR §41.37(c)(1)(iv)]**

An amendment to the claims was filed by the Applicant on August 01, 2008.

This amendment was entered. No subsequent amendments were filed.

### **V. SUMMARY OF THE CLAIMED SUBJECT MATTER [37 CFR §41.37(c)(1)(v)]**

The pending claims include three independent claims, which are Claim 1, Claim 7, and Claim 13.

#### **Claim 1**

**Claim 1** sets forth a striking board holding device (*10, Fig. 1*) for holding a striking board (*30, Figs 1-3*) while practicing a martial art. (*See preamble of Claim 1 in indexed claims, page 15, line 3-4 of original application.*) The claimed holding device (*10*) has a framework (*12, Fig. 1*) that contains a plurality of vertical rails (*14, 16, 18, 20, Figs 1-3*). Adjacent pairs of vertical rails (*14, 16, 18, 20*) define sides of at least two striking planes (*31, 32, 34, Figs. 1-3*) (*See Specification page 8, last paragraph, continued to top of page 9*).

Connectors (*40, Fig. 2, see Specification, page 10, line 14-15*) are disposed along each of the vertical rails (*14, 16, 18, 20*) for selectively joining striking boards (*30*) to the vertical rails (*14, 16, 18, 20*). (*See specification, page 10, lines 17- 22*) A slack fabric barrier (*36, Figs 1 & 3*)

is suspended between each of the adjacent pairs of vertical rails (14, 16, 18, 20). The fabric barrier (36) creates a catch partition that corrals falling pieces of a striking board (30) once it is broken by a martial arts blow. (See *Specification, page 12, lines 18-24*)

#### Claim 7

Claim 7 sets forth a system for practicing martial arts. (See *preamble of Claim 13 in indexed claims, page 16, lines 17-19 of original application.*) A plurality of striking targets (30) are provided. To hold the striking targets (30), at least one set of parallel vertical rails (14, 16, 18, 20) is provided. The set of vertical rails define at least one striking plane (31, 32, 34, Figs. 1-3). (See *Specification page 8, last paragraph, continued to top of page 9*)

A slack fabric barrier (36, Figs 1 & 3) is suspended between each set of parallel rails (14, 16, 18, 20). The fabric barrier (36) corrals the separate pieces of the striking targets after being impacted and broken. (See *Specification, page 12, lines 18-24*) The striking targets (30) are initially held in place by connectors (40) that are disposed along the vertical rails (14, 16, 18, 20).

#### Claim 13

Claim 13 sets forth a method of mounting striking targets for practicing martial arts. (See *preamble of Claim 13 in indexed claims, page 16, line 17-19 of original application.*) In accordance with that method, a plurality of vertical rails (14, 16, 18, 20) are provided. The vertical rails (14, 16, 18, 20) define the sides of at least two non-parallel striking planes. (31, 32, 34, Figs. 1-3) (See *Specification page 8, last paragraph, continued to top of page 9*)

A fabric barrier (36, Figs 1 & 3) is suspended between vertical rails (14, 16, 18, 20) across each of the striking planes (31, 32, 34). Striking targets (30) are suspended across at least one of the striking planes (31, 32, 34) in front of the fabric barrier (36), wherein the fabric barrier (36) corrals pieces of the striking targets (30) as they are broken. (See *Specification, page 12, lines 18-24*)

**VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL [37 CFR §41.37(c)(1)(vi)]**

The grounds of rejection to be reviewed on appeal are as follows:

1. Whether the Examiner erred in rejecting Claims 1, 2, 3, 5, 7, 9, 10, 12, 17 and 19 under 35 USC 102(b) as being anticipated by U.S. Patent No. 6,829,869 to Savoie.
2. Whether the Examiner erred in rejecting Claims 7, 9, 10, 12 and 18 under 35 USC 103(a) as being unpatentable over U.S. Patent No. 6,829,869 to Savoie.
3. Whether the Examiner erred in rejecting Claims 6 under 35 USC 103(a) as being unpatentable over Savoie in view of U.S. Patent No. 3,561,518 to Johnson.
4. Whether the Examiner erred in restricting Claims 13 – 16 in the final action after having already searched, examined and made rejections to matter contained within Claims 13 – 16.

**VII. ARGUMENTS. [37 CFR §41.37(c)(vii)]**

**GROUND - 1**

Whether the Examiner erred in rejecting Claims 1, 2, 3, 5, 7, 9, 10, 12, 17 and 19 under 35 USC 102(b) as being anticipated by U.S. Patent No. 6,829,869 to Savoie.

The rejected claims contain two independent claims, which are Claim 1 and Claim 7.

Claim 1 and Claim 7 are both believed to be fully distinguishable over the cited prior art for the reasons presented below.

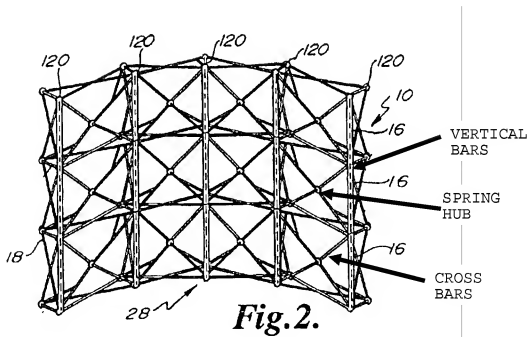
### Claim 1

Claim 1 sets forth a striking board holding device for holding striking boards during the practicing of a martial art. The device has a framework that contains a plurality of vertical rails. Adjacent pairs of vertical rails define sides of at least two striking planes.

Connectors are disposed along each of the vertical rails for selectively joining striking boards to the vertical rails. A slack fabric barrier is suspended between each of the adjacent pairs of vertical rails. The fabric barrier creates a catch partition that corrals falling pieces of a striking board once it is broken by a martial arts blow.

**The Savoie patent** discloses a framework system for “displaying graphics and other informational materials in public settings”. *See Savoie column 1, lines 17-18*. The Savoie patent utilizes spring loaded hub connectors that interconnect channel bars into a framework that can hold displays at different orientations.

The invention of the Savoie patent is best illustrated by Fig. 2 of the Savoie patent, which is reproduced below.



As can be seen, the vertical bars are interconnected by crossbars and hubs. This provides a very stable display for printed panels. However, the structure cannot be used to hold striking boards that are to be broken by a person practicing a martial art. It is obvious that if a striking board were ever to be mounted across the vertical bars, the presence of the crossbars and the hubs behind the striking board would prevent the striking board from ever being broken.

The Savoie patent makes no disclosure of a device that holds striking boards. Furthermore, the Savoie patent does not make any disclosure of the use of a slack fabric barrier that forms a corral to catch broken pieces of a striking board.

More specifically, as applied to the wording of Claim 1, the Savoie patent fails to disclose

***“ A striking board holding device for holding a striking board while practicing a martial art”***

The Savoie reference also fails to disclose

***“ a slack fabric barrier suspended between each of said adjacent pairs of said plurality of vertical rails, wherein said fabric barrier creates a catch partition that corrals falling pieces of a striking board once broken”***

Since the Savoie patent fails to anticipate the matter set forth in Claim 1, it is respectfully requested that the Board reverse the Examiner's 35 USC 102 rejections as applied to Claim 1 and its dependent claims.

**In regard to Claim 5**

Claim 5 depends from Claim 1. Claim 5 sets forth *“the device according to Claim 1, wherein said vertical rails have inside edges that face into said framework and outside edges that face out of said framework, wherein said connectors are disposed on both said inside edges and said outside edges.”*

The Savoie patent makes no disclosure of connectors being present on both the inside edges and the outside edges of the vertical rail. Accordingly, the Savoie patent does not anticipate the matter of Claim 5. The Board is therefore asked to reverse the Examiner’s rejection to Claim 5 for being unsupported by the cited prior art.

#### **In regard to Claim 17**

Claim 17 depends from Claim 1. Claim 17 sets forth *“the device according to Claim 1, wherein each of said striking planes has a top and a bottom, and said device further includes a rigid catch plate extending across each of said striking planes proximate said bottom of said striking planes.”*

The Savoie patent makes no disclosure of a rigid catch plate extending across the striking planes. Accordingly, the Savoie patent does not anticipate the matter of Claim 17. The Board is therefore asked to reverse the Examiner’s rejection to Claim 17 for being unsupported by the cited prior art.

#### **Claim 7**

Claim 7 sets forth a system for practicing martial arts. A plurality of striking targets are provided. Each of the striking targets is capable of separating into separate pieces when impacted with a sufficient martial arts blow. To hold the striking targets, at least one set of parallel vertical rails is provided. The set of vertical rails define at least one striking plane.

A slack fabric barrier is suspended between each set of parallel rails. The fabric barrier corrals the separate pieces of the striking targets after being impacted and broken. The striking targets are initially held in place by connectors that are disposed along the vertical rails.

**The Savoie patent** discloses a framework system for “*displaying graphics and other informational materials in public settings*”. *See Savoie column 1, lines 17-18*. The Savoie patent utilizes spring loaded hub connectors that interconnect channel bars into a framework that can hold displays at different orientations.

The Savoie patent makes no disclosure of any type of striking target or any support that can hold a striking target so it can be hit by a person practicing martial arts

More specifically, as applied to the wording of Claim 7, the Savoie patent fails to anticipate;

***“a plurality of striking targets, each of said striking targets having a predetermined length, a front surface and a rear surface, wherein each of said striking targets is capable of separating into separate pieces when impacted with a sufficient martial arts blow;”***

Furthermore, the Savoie patent fails to anticipate;

***“a slack fabric barrier suspended between each said set of parallel rails for corralling said separate pieces of said striking targets after being impacted;”***

Since the Savoie patent fails to anticipate the matter set forth in Claim 7, it is respectfully requested that the Board reverse the Examiner’s 35 USC 102 rejections as applied to Claim 7 and its dependent claims.

#### **In regard to Claim 18**

Claim 18 depends from Claim 7. Claim 18 sets forth “*the device according to Claim 7, wherein each of said striking planes has a top and a bottom, and said device further includes a rigid catch plate extending across each of said striking planes proximate said bottom of said striking planes.*”

The Savoie patent makes no disclosure of a rigid catch plate extending across the striking planes. Accordingly, the Savoie patent does not anticipate the matter of Claim 18. The Board is therefore asked to reverse the Examiner’s rejection to Claim 18 for being unsupported by the



cited prior art.

## **GROUND -2**

**Whether the Examiner erred in rejecting Claims 7, 9, 10, 12 and 18 under 35 USC 103(a) as being unpatentable over U.S. Patent No. 6,829,869 to Savoie.**

The rejected claims contain a single, independent claim, which is Claim 7. Claims 9, 10, 12 and 18 depend from Claim 7.

### **Claim 7**

Claim 7 sets forth a system for practicing martial arts. A plurality of striking targets are provided. Each of the striking targets is capable of separating into separate pieces when impacted with a sufficient martial arts blow. To hold the striking targets, at least one set of parallel vertical rails is provided. The set of vertical rails define at least one striking plane.

A slack fabric barrier is suspended between each set of parallel rails. The fabric barrier corrals the separate pieces of the striking targets after being impacted and broken. The striking targets are initially held in place by connectors that are disposed along the vertical rails.

**The Savoie patent** discloses a framework system for *“displaying graphics and other informational materials in public settings”*. *See Savoie column 1, lines 17-18*. The Savoie patent utilizes spring loaded hub connectors that interconnect channel bars into a framework that can hold displays at different orientations.

The Savoie patent makes no disclosure of any type of striking target or any support that can hold a striking target so it can be hit by a person practicing martial arts

More specifically, as applied to the wording of Claim 7, the Savoie patent fails to disclose;

***“a plurality of striking targets, each of said striking targets having a predetermined length, a front surface and a rear surface, wherein each of said striking targets***

*is capable of separating into separate pieces when impacted with a sufficient martial arts blow;"*

Furthermore, the Savoie patent fails to disclose or suggest;

*" a slack fabric barrier suspended between each said set of parallel rails for corralling said separate pieces of said striking targets after being impacted;"*

Since the Savoie patent fails to reasonably disclose or suggest the matter set forth in Claim 7, it is respectfully requested that the Board reverse the Examiner's 35 USC 103 rejections as applied to Claim 7 and its dependent claims.

#### **In regard to Claim 18**

Claim 18 depends from Claim 7. Claim 18 sets forth *"the device according to Claim 7, wherein each of said striking planes has a top and a bottom, and said device further includes a rigid catch plate extending across each of said striking planes proximate said bottom of said striking planes."*

The Savoie patent makes no disclosure of a rigid catch plate extending across the striking planes. Accordingly, the Savoie patent does not disclose the matter of Claim 18. The Board is therefore asked to reverse the Examiner's rejection to Claim 18 for being unsupported by the cited prior art.

#### **GROUND – 3**

**Whether the Examiner erred in rejecting Claims 6 under 35 USC 103(a) as being unpatentable over Savoie in view of U.S. Patent No. 3,561,518 to Johnson.**

Claim 6 depends from Claim 1. Claim 6 states that the connector claimed in Claim 1 are made from hook and loop material. The Examiner cites Johnson to show the use of hook and loop material.

The matter of Claim 1 is believed to be fully distinguishable over the Savoie patent for

the reasons previously presented. The secondary Johnson patent does not disclose any structure for holding striking panels. As such, the Johnson patent does not address the stated deficiencies of the Savoie patent as applied to Claim 1.

Claim 5 is therefore believed to be allowable because it depends from and further defines an allowable base claim. It is therefore respectfully requested that the Examiner's 35 USC 103 rejections be reversed as applied to Claim 15 and its dependent claims.

#### **GROUND - 4**

**Whether the Examiner erred in restricting Claims 13 – 16 in the final action after having already searched, examined and made rejections to matter contained within Claims 13 – 16.**

In the Office Action dated October 26, 2007, the Examiner indicated that he searched and examined the matter of all pending claims, including Claims 13 – 16.

The Examiner not only searched the claimed matter, the Examiner conducted a detailed examination of the claimed matter.

Based upon the Examiner's rejections, the applicant amended Claim 13. The amendments made to Claim 13 were parallel to the amendments made to pending independent Claim 1 and Claim 7. As such, the amendment required no new searching or consideration other than would have been necessary for the full examination of pending claims 1 and 7.

MPEP 803, second paragraph, states that ***“if the search and examination of an entire application can be made without serious burden, the examiner MUST examine it on the merits, even though it includes claims to distinct or independent inventions.”***

The showing of a “serious burden” must be made if a restriction is to be proper. In the present case, the application has already been searched and the claims examined. If the search and examination has already occurred, how can these actions possibly present be a serious burden to the Examiner? The Examiner need only apply the search and the previous examination to the amended claims.

The Examiner has made no argument explaining how he is burdened considering that a search and examination has already occurred. Rather, the Examiner ignores the plain fact that the claims have already been examined and states he will be burdened by a fictional search and examination that is clearly not required under the circumstances.

Past events cannot represent a burden to an examiner. Since it is clear that the examination of all the pending claims has occurred, allowing the examined claims to be considered on appeal will not burden the Examiner in any way.

If MPEP 803(2) is a valid rule, then the Examiner's restriction requirement must be reversed on all pending claims considered by the Board of Appeals. The Examiner has not made a showing of burden, thus rule 803(2) should be obeyed.

### **CONCLUSION**

The Applicant's brief is believed to be in full compliance with 37 C.F.R. §41.37 et seq. In view of the above arguments, the Board is requested to cause the Examiner to remove the rejections and allow the pending claims.

Respectfully Submitted,

/Eric LaMorte/

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**VIII. CLAIMS APPENDIX [37 CFR 41.47(c)(8)].**

The pending claims stand as follows:

1. A striking board holding device for holding a striking board while practicing a martial art, said device comprising:

    a framework containing a plurality of vertical rails, wherein adjacent pairs of said plurality of vertical rails define sides of at least two striking planes;

    connectors disposed along each of said vertical rails for selectively joining striking boards to said vertical rails at any point along said vertical rails; and

    a slack fabric barrier suspended between each of said adjacent pairs of said plurality of vertical rails, wherein said fabric barrier creates a catch partition that corrals falling pieces of a striking board once broken.

2. The device according to Claim 1, wherein said at least two striking planes are not parallel.

3. The device according to Claim 1, wherein said vertical rails define at least three non-parallel striking planes.

4. (Cancelled)

5. The device according to Claim 1, wherein said vertical rails have inside edges that face into said framework and outside edges

that face out of said framework, wherein said connectors are disposed on both said inside edges and said outside edges.

6. The device according to Claim 1, wherein said connectors include hook and loop material.

7. A system for practicing martial arts, comprising:

a plurality of striking targets, each of said striking targets having a predetermined length, a front surface and a rear surface, wherein each of said striking targets is capable of separating into separate pieces when impacted with a sufficient martial arts blow;

at least ~~two~~ one set of parallel vertical rails that define at least one striking plane;

a slack fabric barrier suspended between each said set of parallel rails for corralling said separate pieces of said striking targets after being impacted; and

connectors disposed along said vertical rails and said striking targets for selectively joining striking targets to said vertical rails at any point along said vertical rails.

8. (Cancelled)

9. The system according to Claim 7, wherein at least four vertical rails are provided that define at least three non-parallel striking planes.

10. The system according to Claim 9, wherein each of said striking planes has a width slightly smaller than said predetermined length of said striking targets.

11. (Cancelled)

12. The system according to Claim 7, wherein said connectors are selected from a group consisting of snaps, hooks, pegs and hook and loop material.

13. A method of mounting striking targets for practicing martial arts, said method comprising the steps of:

- providing a plurality of vertical rails, wherein said vertical rails define sides of at least two non-parallel striking planes;

- suspending a fabric barrier between vertical rails across each of said striking planes;

- providing a plurality of striking targets;

- selectively suspending at least some of said striking targets across at least one of said striking planes between said sides in front of said fabric barrier, wherein said fabric barrier corrals pieces of said striking targets as they are broken.

14. The method according to Claim 13, wherein said plurality of

vertical rails all have a length of at least six feet and said step of suspending at least some of said striking targets includes selectively attaching said striking targets to said vertical rails at different points along the length of said vertical rails.

15. The method according to Claim 13, wherein said step of providing a plurality of vertical rails includes providing a framework of four vertical rails that define three striking planes.

16. The method according to Claim 13, wherein said step of selectively suspending at least some of said striking targets includes selectively joining said striking targets to said vertical rails without hook and loop connectors.

17. The device according to Claim 1, wherein each of said striking planes has a top and a bottom, and said device further includes a rigid catch plate extending across each of said striking planes proximate said bottom of said striking planes.

18. The system according to Claim 7, wherein each said striking plane has a top and a bottom, and said system further includes a rigid catch plate extending across said striking plane proximate said bottom of said striking planes.



19. The method according to Claim 1, wherein each of said striking planes has a top and a bottom, and said method further includes providing a rigid catch plate that extends across each of said striking planes proximate said bottom of said striking planes.

**IX. EVIDENCE APPENDIX [37 CFR 41.37(c)(1)(ix)].**

There is no evidence submitted under 37 CFR 1.130, 1.131 or 1.132 or any other evidence relied upon by the applicant

**X. RELATED DECISION APPENDIX [37 CFR 41.37(c)(1)(x)].**

There are no decisions by a court or the Board relevant to this appeal.